

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-744

January 14, 1999

EVELYN ASHBY V. CENTRAL MAINE
POWER COMPANY
Appeal of Consumer Assistance
Division Decision # 24944

ORDER ON APPEAL

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

The appeal presents two issues: whether the Consumer Assistance Division (CAD) properly found that Central Maine Power Company (CMP or Company) had failed to comply with the terms and conditions of the Electricity Lifeline Program (ELP) when CMP changed Ms. Ashby's ELP benefit and co-payment amounts and whether CAD's decision instructing CMP to recalculate Ms. Ashby's usage for ELP in light of the Commission's decision authorizing the installation of a service limiter at Ms. Ashby's residence were correct. We conclude that the CAD's decisions were correct¹ and dismiss CMP's appeal of the CAD's September 2, 1997 decision.

II. BACKGROUND

On January 24, 1997, CMP requested exemptions from the Commission's rules to permit the use of a service limiter adapter for service provided to Evelyn Ashby.² On January 31, 1997, CAD issued its decision allowing CMP to place the limiter on Ms. Ashby's meter. In its decision, CAD noted that the placement of a limiter would allow Ms. Ashby and her daughter, whose medical condition has been certified by a physician as requiring electric service, a level of service needed for essential functions while limiting the risk of additional loss to CMP and its ratepayers. On February 10, 1997, Ms. Ashby appealed the CAD's decision. On February 19, 1997, the Commission upheld the

¹In its appeal of this matter dated September 10, 1997, CMP also appealed CAD's denial of CMP's request to reduce the capacity of the service limiter that had been authorized at Ms. Ashby's service entrance. On March 17, 1998, CMP withdrew its appeal of this issue.

²A service limiter is a device attached to the customer's meter that limits the customer's usage to the amount necessary to operate essential household equipment.

CAD's decision authorizing the installation of the service limiter.

Ms. Ashby, as a residential customer who qualifies for the Home Energy Assistance Program (HEAP), meets the initial eligibility criteria for the Electric Lifeline Program (ELP). Coastal Economic Development (CED) certified Ms. Ashby as eligible for ELP and calculated her ELP benefit from CMP's usage information. CED informed CMP of the ELP benefit amount. On March 6, 1997, CMP processed Ms. Ashby's ELP certification. Under the ELP, Ms. Ashby would pay a \$12 a month co-payment and receive a monthly credit of \$289 to her account.

On April 4, 1997, CMP went to Ms. Ashby's home to investigate the truthfulness of her Home Energy Assistance Program (HEAP) application. CMP was unsure whether Ms. Ashby's daughter lived on the property. CMP found that the daughter lived on the property but in a structure that was 5 feet from Ms. Ashby's house. Both dwellings used electric service through the same meter. Under the rules of HEAP, Ms. Ashby's daughter's separate dwelling was considered a separate household. On the HEAP application, Ms. Ashby's daughter was not listed as a member of the household and her income was not included on the form. CMP said the daughter's disability income should be considered for the ELP enrollment if the usage of both is to be considered in the calculation of the ELP credit.

On May 1, 1997, a new ELP was established by CMP for Ms. Ashby's account. In the new calculation, CMP estimated Ms. Ashby's daughter's usage and then deducted this amount from the usage recorded at the meter. The reduced usage increased the co-payment on the account from \$12 to \$453. The ELP benefit was set at \$116 monthly.

In June 1997, CMP filed a request with the CAD that it be allowed to reduce the size of the service limiter from 20 amps to 10 amps during the warmer summer months. In a decision dated September 2, 1997, the Director of the CAD found that, given the customer's balance at the time (\$590.37) and the presence of the 20 amp service limiter, a reduction in the size of the service limiter was not warranted.

In addition, the Director found that the Company had violated its Terms and Conditions by unilaterally recalculating the customer's ELP benefits in May, 1997. Since the installation of the service limiter had reduced the usage at the customer's location, the Director authorized CMP to change its usage calculation based on past usage and estimated consumption for the next five months. Finally, the Director stated that "CMP must take steps to ensure that a request for exemption is authorized

by the CAD before any ELP participants benefit level is reduced or the co-payment is increased for any reason other than those allowed in the Terms and Conditions."

On September 10, 1997, CMP appealed the CAD Director's decision denying the Company's request to reduce the service limiter and the decision regarding the Company's calculation of the ELP benefit credit. In a letter dated March 17, 1998, the Company withdrew its appeal of the service limiter issue. The Company has requested that the Commission overrule the CAD's decisions citing CMP for violating its Terms and Conditions; ordering a recalculation of the ELP benefit; and requiring, "CMP to obtain an exemption every time it is required to conduct a usage analysis to differentiate the residential usage for an ELP-eligible household from other usage passing through a common meter."

III. DECISION

Section 33 of the Company's Terms and Conditions provides that all enrollment, eligibility certification and benefit determinations for the ELP are to be done by Community Action Program (CAP) agencies which are under contract with the Company. Under the provisions of the contracts with the CAP agencies, the CAPs are required to submit a request for usage information to the Company within 5 business days of certifying the HEAP application of the potentially eligible customer. The Company then is required to provide the usage information to the CAP agencies within 5 business days of receiving a request for information. After CMP reports usage information, the CAP agency calculates the ELP credit amount based on the participant's income and usage. A customer credit amount may be adjusted during the program year under the following conditions:

- i) when the customer moves to a new location;
- ii) when electrically powered life support equipment is installed at the customer's location; or
- iii) when adults who reside in an ELP household separate.

Central Maine Power Company, Terms and Conditions, Section 33(V)(F).

In the case before us, CED, a Community Action Program agency under contract with the Company certified Ms. Ashby for the ELP program. Based on the usage information reported by CMP, CED calculated an ELP benefit amount for Ms. Ashby. Under the Company's Terms and Conditions, CMP was not authorized to

unilaterally modify the CAP agency's determination of benefits. If CMP believed that the CAP agency had erred in calculating the benefit, the proper avenue was to request that the CAP agency recalculate the ELP benefit amount. CMP did not do so here.

CMP argues that it is necessary to estimate individual usage to determine that individual's ELP benefit in situations where a common meter is used at the home of the ELP participant. While this argument may have merit, it should occur under procedures approved by the Commission, and not on an ad hoc basis as CMP has done here. Had CMP followed the procedures set forth in its tariff and gone back to the CAP for a recalculation of benefits, we likely would have reached a different result here. Further, we invite CMP to clarify its ELP tariff to address situations such as the one presented here, where a service location contains more than one household for HEAP purposes, but is only served by one meter. In this instance, though, we find that CAD's decision that CMP had violated its Terms and Conditions by unilaterally modifying Ms. Ashby's ELP benefits was correct and, thus, dismiss CMP's appeal on this issue.

CMP has also appealed the CAD's decision that Ms. Ashby's ELP benefit should be recalculated based on her reduced usage resulting from the installation of the service limiter. In *Ashby v. Central Maine Power Company, Request for Appeal of Consumer Assistance Division Decision, CAD #24485*, Docket No. 97-075, Order on Appeal (February 19, 1997), we held that while there was no specific provision in our rules governing the installation of a service limiter, CAD had acted properly under the provisions of Chapter 81, section 14(B) in authorizing an exemption from our rules governing disconnection and allowing the installation of a service limiter. As part of its response to CMP's request to reduce the size of the service limiter, the CAD instructed CMP to recalculate Ms. Ashby's usage for the ELP to reflect the reduced usage associated with the installation of the service limiter.

The CAD's decision instructing CMP to recalculate Ms. Ashby's usage was intended to prevent Ms. Ashby from receiving a windfall on her ELP benefit which was based on Ms. Ashby's usage prior to the installation of the service limiter. This decision of the CAD can properly be construed as part of, and a condition of, our decision authorizing the installation of the service limiter. Therefore, we conclude that the CAD's decision requiring CMP to recalculate Ms. Ashby's ELP credit based on the reduced usage associated with the installation of the service limiter was also proper and dismiss CMP's appeal of this decision.

Dated at Augusta, Maine this 14th day of January, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.